

**Government Code § 6103;
appearance fees not required**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

OMAR RODRIGUEZ; CINDY GUILLEN-
GOMEZ; STEVE KARAGIOSIAN; ELFEGO
RODRIGUEZ; AND JAMAL CHILDS,

Plaintiffs,

vs.

BURBANK POLICE DEPARTMENT; CITY
OF BURBANK. AND DOES 1 THROUGH
100, INCLUSIVE,

Defendants.

CASE NO. BC 414602

[Assigned to Hon. Joanne O'Donnell, Dept. 37]

**DEFENDANT'S REPLY IN SUPPORT
OF MOTION IN *LIMINE* NO. 2 FOR
AN ORDER EXCLUDING EVIDENCE
OF PURPORTED HARASSMENT
BEFORE 2008**

Date: February 15, 2012

Time: 8:30 a.m.

Dept.: 37

Trial Date: February 15, 2012 (Karagiosian)

Action Filed: May 28, 2009

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1 **I. THE PRIOR DENIAL OF SUMMARY ADJUDICATION AS TO PLAINTIFF'S**
2 **HARASSMENT CLAIM DOES NOT PRECLUDE THE COURT FROM**
3 **EXCLUDING EVIDENCE OF PURPORTED HARASSMENT PRIOR TO 2008.**

4 Plaintiff's primary argument in opposition to this motion is his claim that the motion is
5 contrary to the Court's December 10, 2010 Minute Order (the "Order") denying Burbank's motion
6 for summary adjudication of Karagiosian's harassment claim. (Opp. at 2.) That is not the case.
7 The issue on summary judgment/adjudication was whether Karagiosian had submitted sufficient
8 evidence to allow his harassment claim to go to trial. The Court held Karagiosian had submitted
9 "sufficient evidence to create *a* triable issue of fact as to whether he was harassed within the
10 statute of limitations *or* within a period justified by the continuing violations doctrine." (Emphasis
11 added.) Thus, the denial of summary judgment/adjudication was *not* dependent on the Court's
12 holding regarding the continuing violations doctrine. Rather, the Order indicated that even if the
13 continuing violations doctrine was not applied, the Court would allow the harassment claim to go
14 to trial based on its separate and independent holding that a triable issue had been raised as to
15 actionable harassment *within* the state of limitations period. Thus, an order precluding evidence
16 of purported pre-2008 harassment because the probative value of such evidence is outweighed by
17 the risk of undue prejudice (Evid. Code § 352) would *not* be contrary to the Court's prior Order.

18 Further, the Court has the inherent authority to reconsider its prior orders. *FLIR Systems,*
19 *Inc. v. Parrish* (2009) 174 Cal.4th 1270, 1283; *Montgani v. Johnson* (2008) 162 Cal.App.4th 1231,
20 1238. Here, the Court's December 10, 2010 holding as to the applicability of the continuing
21 violation doctrine is expressly based on only *two* of the *three* prongs of the test for making this
22 determination. In *Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 802, the California
23 Supreme Court held that a continuing violation occurs: "if the employer's unlawful actions are (1)
24 sufficiently similar in kind . . . ; (2) have occurred with reasonable frequency; (3) and *have not*
25 *acquired a degree of permanence.*" *Id.* at 823 (emphasis added.) In this case, the Court's Order is
26 expressly based on findings regarding the similarity and frequency of the alleged acts of
27 harassment, with no apparent consideration of the degree of permanence acquired as to acts of
28 harassment purported to have occurred prior to the actionable time period, actions which he admits

1 ended in February 2007 and were followed by a period of about a year in which no harassment
2 occurred.

3 The Court's prior omission of the third prong of the *Richards* test in its summary judgment
4 ruling **does not** in any way preclude the Court from now correctly applying all three prongs of the
5 test and changing its determination as to the applicability of the continuing violation doctrine in
6 the context of this motion, *i.e.*, it the prior ruling does not prevent the Court from now determining
7 that the alleged pre-2008 acts of harassment had acquired a degree of permanence well before the
8 alleged acts of retaliation in the year prior to Karagiosian's complaint to the DFEH, and that the
9 continuing violations doctrine is therefore inapplicable.

10 **II. BURBANK HAS ESTABLISHED THAT IT WILL BE SUBSTANTIALLY**
11 **PREJUDICED IF THIS MOTION IS NOT GRANTED.**

12 As Defendant plainly set out in Section A of its moving papers that: 1) if this motion is not
13 granted and Karagiosian and/or his counsel are permitted to comment to the jury about alleged
14 harassment two to five years before he complained to the DFEH, the jury will very likely be
15 misled into basing an award of damages on these time-barred claims; and 2) Burbank will be
16 prejudiced by having to rely on the now-faded memories of witnesses as to events they
17 purportedly witnessed as many as eight years ago. (Mov. Papers 4:15-5:2.) Karagiosian cannot,
18 and does not even attempt to, dispute these assertions in his Opposition.¹

19
20 DATED: February 14, 2012

BALLARD ROSENBERG GOLPER & SAVITT, LLP

21
22 By: 

Philip L. Reznik

23 Attorneys for Defendant CITY OF BURBANK
24
25

26
27 ¹ Instead, he takes the position that they don't exist because they are set out in the points and
28 authorities rather than counsel's declaration in support of the motion. (Opp. 3:3-8.)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 500 North Brand Boulevard, Twentieth Floor, Glendale, CA 91203-9946.

On February __, 2012, I served true copies of the following document(s) described as

DEFENDANT'S REPLY IN SUPPORT OF MOTION IN *LIMINE* NO. 2 FOR AN ORDER EXCLUDING EVIDENCE OF PURPORTED HARASSMENT BEFORE 2008

on the interested parties in this action as follows:

See attached service list.

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List. I am "readily familiar" with Ballard Rosenberg Golper & Savitt, LLP's practice for collecting and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Glendale, California, on that same day following ordinary business practices.

☒ **BY FAX TRANSMISSION:** At or before 5:00 p.m., I caused said document(s) to be transmitted by facsimile. The telephone number of the sending facsimile machine was (818) 506-4827. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The document was transmitted by facsimile transmission, and the sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error.

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** By electronic mail transmission from lreheis@brgslaw.com on February __, 2012, by transmitting a PDF format copy of such document(s) to each such person at the e-mail address listed below their address(es). The document(s) was/were transmitted by electronic transmission and such transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 14, 2012, at Glendale, California.


Leslie Reheis

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